United Nations A/63/945

General Assembly

Distr.: General
13 August 2009
English
Original: Spanish

**Sixty-third session**
Agenda items 56, 64 and 99

**Advancement of women**

**Promotion and protection of human rights**

**Measures to eliminate international terrorism**

## Letter dated 10 August 2009 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General

I have the honour to denounce the injustice that the Government of the United States of America has once again perpetrated against Ms. Adriana Pérez O'Connor, the wife of Gerardo Hernández Nordelo, who has been unjustly imprisoned in a United States jail for more than a decade. On 15 July 2009, after a wait of 95 days, the United States Interests Section in Havana officially confirmed that the visa requested by Ms. Adriana to travel to the United States had once again been denied.

The Permanent Mission of Cuba to the United Nations wishes to report that the United States Department of State has denied Adriana Pérez a visa 10 times. She has therefore never been able to visit her husband, who, on 12 September 1998, was detained arbitrarily and unjustly sentenced to prison in the United States for crimes he did not commit.

The response of the United States authorities was given to Adriana on the day of her twenty-first wedding anniversary, thereby demonstrating the treacherous and cruel behaviour of the Department of State. Yet, the country styles itself the champion of universal democracy and of respect for the law and human rights.

The crude argument used on this occasion is that Ms. Adriana constitutes a threat to the stability and national security of the United States. This is shameful confirmation that the current Secretary of State, Hillary Clinton, is using the same argument as her predecessor, Condoleezza Rice, to deny Ms. Adriana Pérez her visa.

This decision of the United States authorities violates the country's own law and demonstrates a systematic violation of its international obligations as set forth, inter alia, in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the principles for the protection of all persons deprived of their liberty; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Standard Minimum Rules for the Treatment of Prisoners.

09-45833 (E) 270809 270809

Please recycle

The conduct of the Government of the United States is not only clearly contrary to universally recognized international norms but is also a systematic and flagrant violation of human rights and an act of torture against Gerardo Hernández Nordelo — unjustly sentenced to two life sentences plus 15 years in prison — and members of his family.

With this further reprisal, the United States Government seeks to break the will and the revolutionary spirit of Gerardo Hernández Nordelo, who, along with René González, Fernando González, Ramón Labañino and Antonio Guerrero, have been serving unjust and arbitrary sentences for a decade for reporting the criminal activity of the terrorist groups that operated and continue to operate with total impunity against Cuba from United States territory.

This decision demonstrates how eager the United States authorities are to punish the five Cuban counter-terrorism fighters for their demonstration of heroism and patriotism to the international community.

Added to the irrational refusal of Adriana's visa and Gerardo's unjust sentence is the fact that the United States Supreme Court recently refused to hear the case, thereby closing off practically all legal avenues for resolving the situation.

On 15 June, after a tortuous and arbitrary trial, the United States Supreme Court decided to ignore the universal and unprecedented call to review the case of the five Cuban counter-terrorism fighters. The judges instead decided to do the bidding of the Obama Administration and, without giving them any consideration, disregarded the sound arguments presented by the defence and a dozen supporting documents signed by 10 Nobel laureates, legislative bodies, hundreds of parliamentarians, prestigious organizations of jurists from a number of countries, including the United States, and human rights campaigners, academics, religious leaders and others representing millions of people on all continents.

By so doing, the Court validated an endless series of violations of the law and legal procedures and became complicit in the policy of promoting and protecting terrorism which was and is the basis of the great injustice perpetrated against our five counter-terrorism fighters. The list of these violations is long and any one of them is sufficient for a ruling to release the accused immediately.

The Permanent Mission of Cuba wishes to recall that for half a century, successive United States administrations have organized and encouraged, or permitted, the commission of numerous terrorist acts against Cuba; these acts have claimed victims among nationals of other countries, including the United States. The behaviour of the current Administration continues the policy of guaranteeing impunity to terrorists strolling in the streets of Miami, such as Luis Posada Carriles and Orlando Bosch, who were responsible for the mid-flight destruction of a civil aircraft that killed 73 people, while it cruelly punishes those who, without harming anybody, gave their youth to prevent the misdeeds of those and other criminals.

The Permanent Mission of the Republic of Cuba to the United Nations strenuously rejects the refusal of a visa to Adriana Pérez O'Connor and determines the suffering imposed on Adriana and Gerardo to be a truly cruel act. Therefore, we demand that the Government of the United States grant Adriana Pérez a humanitarian visa immediately so that she may visit her husband.

The Permanent Mission of the Republic of Cuba to the United Nations transmits herewith the "Appeal to the parliaments and peoples of the world", approved by the National Assembly of the Republic of Cuba.

I have the honour to request that this letter, and its annex, be circulated as a document of the General Assembly in all official languages under the agenda items entitled "Promotion and protection of human rights", "Advancement of women" and "Measures to eliminate international terrorism".

(*Signed*) Abelardo **Moreno Fernández**
Ambassador
Permanent Representative
Permanent Mission of Cuba to the United Nations

## Annex to the letter dated 10 August 2009 from the Permanent Representative of Cuba addressed to the Secretary-General

[1 August 2009]

## Appeal to the parliaments and peoples of the world

Gerardo Hernández Nordelo, Ramón Labañino Salazar, Antonio Guerrero Rodríguez, Fernando González Llort and René González Sehwerert will soon have been unjustly imprisoned for 11 years.

On 15 June, after a tortuous and arbitrary trial, the United States Supreme Court decided to ignore the universal and unprecedented call to review the case. The judges instead decided to do the bidding of the Obama Administration and, without giving them any consideration, disregarded the sound arguments presented by the defence and a dozen supporting documents signed by 10 Nobel laureates, legislative bodies, hundreds of parliamentarians, prestigious organizations of jurists from a number of countries, including the United States, and human rights campaigners, academics, religious leaders and others representing millions of people on all continents.

By so doing, the Court validated an endless series of violations of the law and legal procedures and became complicit in the policy of promoting and protecting terrorism, which was and is the basis of the great injustice perpetrated against our five compatriots. The list of these violations is long and any one of them is sufficient for a ruling to release the accused immediately.

Immediately after capturing them, in the early hours of Saturday, 12 September 1998, the FBI informed the representatives of the terrorist mafia and the Miami media, who then launched an intense and incessant campaign of hate and slander, falsely accusing them of being "spies" and conspiring with the Government to incorporate the incident of 24 February 1996 into the charges after they had spent more than six months in prison.

For the 17 months following their arrest they were kept in solitary confinement, in punishment cells, cut off from the outside world, in violation of the very United States prison regulations that restrict such treatment to a maximum of 60 days and to dangerous criminals who have committed serious offences while in prison. This cruel procedure has been used on them several times since then, without any justification, in order to hamper their defence. They were locked in that dreadful "hole" for several weeks in June 2001, when they should have been preparing for their only opportunity to address the Court at the end of the trial. They again endured the infamous double incarceration, in even harsher conditions, for the whole of March 2003, which coincided exactly with the deadline for submitting appeals to the Atlanta Court.

For more than 10 years, they and their defence attorneys have faced great obstacles in exercising their rights. They were denied access to much of the evidence supporting the fraudulent accusations against them, and rejecting more than 10 defence motions before the trial began. They are being kept in five separate prisons, far apart and in remote areas of the United States, which makes communication with their lawyers very difficult. In addition, on several occasions,

always at decisive moments in the trial, the legal correspondence they needed to formulate their appeal failed to reach them or was delayed. Gerardo Hernández Nordelo never received the documents related to his appeal to the Supreme Court sent to him by registered mail at the beginning of this year. This clear and inexcusable violation of the rights of the prisoner and his defence attorney is one more in a long list of obstacles to Gerardo's communication with the outside that persist in spite of the numerous Cuban complaints to the United States authorities.

The sham trial was a macabre farce throughout. The Government insisted that it should be held in Miami, even though it coincided with the scandalous kidnapping of Elián González, a six-year-old child, for whose rescue special forces had to be sent in from Washington since all the local authorities and agencies were in league with the kidnappers. The District Attorney's Office even refused to transfer the trial to the neighbouring city of Fort Lauderdale, half an hour away.

The Government blatantly lied when it alleged that Miami was an appropriate location at that time, in the midst of the hostile and threatening atmosphere created by Elián's kidnappers even though, several years later, in 2002, when its employees were facing a civil suit, it requested a change of venue, reasoning that nothing, even something far less significant and only indirectly related to Cuba, could receive a fair trial in Miami (Ramírez vs. Ashcroft, 01-4835 Civ-Huck, 25 June 2002). The issue of the refusal to change the venue and the prevailing climate there led the panel of judges in Atlanta, on 9 August 2005, to unanimously declare the whole trial invalid and order that another be conducted in a different location (Eleventh Circuit Court of Appeals, No. 01-17176, 03-11087). In an unusual move, contrary to United States norms and practice, the Government appealed against that historic decision and, in a divided vote, forced the Court of Appeals to reverse it.

That same year, on 27 May 2005, the United Nations Working Group on Arbitrary Detention concluded, for the first time in a case pertaining to the United States, that the deprivation of liberty of the Five was arbitrary and contrary to international agreements as a result of the violations committed during the legal process, and it urged the United States Government to take immediate measures to resolve the situation.

In addition to requiring the trial to be held in Miami, the Government took other steps to secure the most harsh and unfair sentences. During the selection of the jury it showed obvious racism by excluding the majority of African-American candidates. The District Attorney's Office permitted all manner of pressure and threats against the members of the jury, who were persecuted inside the building, harassed by crowds and hounded by journalists on the Government payroll and working for the terrorists, to such an extent that on several occasions they expressed fear and concern for their safety, which led the judge to complain and urge the Government to do something to remedy the situation (see official transcript of the trial, pp. 111, 112 and 14644-14646).

The so-called evidence against them, capriciously classified as secret, was wilfully manipulated in order to fabricate the main charges, charges which the Government itself and the Court of Appeals later acknowledged to be false. High-ranking military officials who appeared as witnesses or experts and reviewed the supposed evidence all, without exception, affirmed under oath that they had not found anything that indicated a search for secret information or that affected the national security of the United States (Rear Admiral Eugene Carroll, retired, official

transcript of the trial, pp. 8196-8301; Army Major General Edward Breed Atkeson, retired, ibid., pp. 11049-11199; former Commander-in-Chief of United States Southern Command General Charles Elliot Wilhelm, ibid., pp. 11491-11547; Air Force Lieutenant-General James R. Clapper, retired, ibid., pp. 13089-1335). In September 2008 the Court of Appeals sitting *en banc* unanimously found that there was no evidence whatsoever that the accused had gathered or transmitted secret information or that they had harmed the national security of the United States, and it therefore declared that the sentences for the second charge (conspiracy to commit espionage) were erroneous, vacated them and remanded Ramón and Antonio for resentencing (Eleventh Circuit Court of Appeals, No. 01-17176, D.C. Docket No. 98-00721-CR-JAL, pp. 70-81). However, in an astonishing show of discrimination, even though it acknowledged that the same should be done for Gerardo, it refused to do so, stating that he was already serving another life sentence.

As for Fernando González, for different reasons, the Court also declared the sentence erroneous, quashed it and remanded him for resentencing (ibid., pp. 67-69). It should be stressed that those "errors" cannot be attributed solely to the Court, since it handed down the exact sentences requested by the District Attorney.

There is no greater evidence of prevarication than the other life sentence given to Gerardo Hernández Nordelo for the third charge (conspiracy to commit murder).

In May 2001 the Government itself recognized that, in the light of the evidence presented at the trial, the third charge could not be proven due to an insurmountable obstacle for the prosecution. At the last minute, the Government requested a modification and, in a step acknowledged by the District Attorney to lack precedents, petitioned the Court of Appeals (emergency petition for writ of prohibition, pp. 1-8 and 27-31). Once the petition was denied, the most implausible thing happened: without asking a single question and in a matter of minutes, the jury found Gerardo guilty of an alleged crime that he did not commit and that the Government itself had recognized it could not prove.

This demonstrates beyond any doubt that the so-called trial in Miami was a sham, plain and simple. Intimidated, pressured and threatened, the jurors had spent seven months in a room filled with the same wrongdoers that the local media had shown kidnapping a child, defying the Government and the law and threatening to set fire to the city, and heard them ask the Court to give Gerardo the harshest sentence.

In spite of all that, the District Attorney's Office asked for and obtained a life sentence.

The disproportionate prison sentences imposed on the Five stand in stark contrast to those given in recent years to others accused of actual espionage, sometimes on an exceptional scale, and even to some linked to violent armed attacks against the United States. None of them was given a life sentence, all of them received lighter sentences than our comrades, some have already served their sentences and are now free, and others, convicted of espionage, have had the charges against them withdrawn by the Obama Administration and have been set free.

However, there is something even more revealing about the true nature of this whole process. It shows that the Government's aim was to protect and harbour the terrorists and to prevent their sinister plans from being discovered, thereby

providing cover-up and becoming accomplices in their future outrages. Thus, in addition to the exaggerated prison sentences, and in recognition of their heroic mission to fight terrorism, our comrades were given an additional restriction of "incapacitation" for after their release, to prevent them from doing anything detrimental to the terrorists again. It was expressed in the sentencing of René González in these words: "the defendant is prohibited from associating with or visiting specific places where individuals or groups such as terrorists, members of organizations advocating violence and organized crime figures are known to be or frequent" (transcript of the sentencing hearing, 14 December 2001, pp. 45-46).

"Incapacitation" was so important for the United States authorities that the same prohibition was imposed on Antonio Guerrero, who is already serving a life sentence plus ten years. As for the other three comrades, born in Cuba, once they have served their sentences they will be immediately expelled from the United States. The terrorists there have nothing to fear. No subterfuge is needed when they announce new criminal acts openly, as they already do.

Those who have unjustly imprisoned Gerardo, Ramón, Antonio, Fernando and René are showing unforgivable mean-spiritedness towards their families by imposing cumbersome and frustrating procedures for obtaining the necessary visas to visit them, thereby ignoring the rights of the prisoners and their relatives. The situation facing Adriana Pérez and Olga Salanueva is particularly outrageous, since they have been systematically denied the chance to visit their husbands. The United States authorities have thus far refused them permission, turning a deaf ear to the repeated petitions from religious, human rights, trade union and intellectual organizations all over the world.

It is difficult to comprehend why Adriana has been treated so disgracefully. Gerardo is serving two life sentences plus 15 years; he has not seen his wife in 11 years and the Supreme Court has refused to consider his case. It was on 15 July, exactly a month after that outrageous decision and the day of their wedding anniversary, that the State Department chose to inform Adriana that, for the tenth time, she had been refused a visa, alleging that she is "a threat to the stability and national security of the United States".

Added to the irrational sentence imposed on Gerardo is this abominable and truly sadistic torment of two innocent young people, which should be strongly condemned by all humankind.

By refusing to review the case, the Supreme Court is closing off practically all legal avenues for resolving the situation. There remains only the resentencing hearings for Ramón, Antonio and Fernando before the same judge in Miami, who must be urged to release them immediately.

We are entering a new phase in which the United States Administration, and President Obama in particular, has greater responsibility.

The President has the constitutional authority and the moral obligation to ensure justice. He can and must do so. To that end he should order the withdrawal of the charges laid against our compatriots, since they have already been severely contested by the Court of Appeals and by his predecessor in the White House. He must do this if he wants to project an image of change towards Latin America and the world.

The terrorists are jubilantly celebrating the behaviour of the current Administration, which is continuing to guarantee impunity for Luis Posada Carriles and Orlando Bosch, the two men guilty of the mid-flight destruction of a civil aircraft that killed 73 people, while it cruelly punishes those who, without harming anybody, gave their youth to prevent the misdeeds of those and other criminals.

The National Assembly of People's Power appeals to all legislative bodies, parliamentarians, political and social organizations and people of good faith all over the world for support, and calls on them to join together in demanding the immediate release of Gerardo, Ramón, Antonio, Fernando and René. The men and women of Cuba, for whom they have given their lives, will fight tirelessly until they are returned, free, to the grateful homeland.